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TOWN CLERK, ACTON

DECISION 11-08

**DECISION ON THE PETITION BY GARY HAMEL, SR. AND JILL PRIMMER
SEEKING TO OVERTURN THE ZONING ENFORCEMENT OFFICER'S
DETERMINATION THAT THE PROPOSED CONSTRUCTION
OF A 2-BAY GARAGE IS NOT PERMITTED
AT 100 WILLOW STREET**

A public hearing of the Acton Board of Appeals was held in the Town Hall on Monday, June 6, 2011 on the **PETITION FOR REVIEW** by Gary Hamel, Sr. and Jill Primmer pursuant to Section 11.1.1 of the Acton Zoning Bylaw seeking to overturn the Zoning Enforcement Officer's determination that the proposed construction of a second 2-bay garage structure would be a violation of the Acton Zoning Bylaw as set forth in his 4/21/2011 letter to the Petitioner's attorney. The property is located at 100 Willow Street, Map G1/Parcel 85.

Sitting for the Board of Appeals were Kenneth Kozik, Chairman, Jonathan Wagner, Member and Marilyn Peterson, Member. Also present at the hearing were Scott A. Mutch, Assistant Town Planner and Zoning Enforcement Officer, Cheryl Frazier, Board of Appeals Secretary, Gary Hamel, Sr. and Jill Primmer (the Petitioners), Attorney Louis Levine representing the Petitioners and several neighbors (including abutters).

Chairman Kozik opened the hearing and read the contents of the file. The file contained copies of e-mail correspondence from 4/21/11 through 4/26/11 between Mr. Mutch and Attorney Levine relating to the issue which is the subject of the Petition. The file also contained pictures showing the existing structure that Mr. Mutch determined was a garage.

Chairman Kozik then asked Mr. Mutch to explain the reasons he concluded that the construction of a second 2-bay garage structure would not be permitted under the Acton Zoning Bylaw as stated in his 4/21/11 letter and related correspondence with Attorney Levine. Mr. Mutch explained that there was presently on the lot an existing structure that had the appearance of a garage. The proposed construction of a new separate garage structure is not permitted because the applicable Acton Zoning Bylaw refers to a single garage structure as being permitted, but does not authorize the use of more than one garage structure, i.e. plural structures. In fact, as stated in Mr. Mutch's correspondence, the existing garage structure could be expanded for additional garage spaces; but the construction of a new separate garage structure is not permissible under the applicable Acton Zoning Bylaw.

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Thereafter there was extensive discussion between the Board, the Petitioners and Attorney Levine as to whether the existing structure was in fact a garage since it was not being used to store a motor vehicle but for storage of Mr. Hamel's tools and business equipment. The Petitioner's position as summarized by Attorney Levine at the hearing and in his correspondence with Mr. Mutch was that although a structure may have the appearance of a garage, it in fact is not a garage if it is not being used as a garage (i.e. to store a motor vehicle). (Attorney Levine

characterized the existing structure as a “pole barn”.) If the Petitioner’s position is accepted, then a new separate 2-bay garage structure would be permitted under the Acton Zoning Bylaw.

Mr. Mutch’s position is that the existing structure has all the common characteristics of a garage and in fact looks like a garage (although he conceded that the Acton Zoning Bylaw did not specifically define the characteristics of a garage). Mr. Mutch further stated that the Zoning Bylaw which he was relying on in making his determination was Section 3.8.1.1. This section permits the use of a garage as an accessory use and refers to a “private garage or carport for not more than four motor vehicles”; and he concluded that the term “garage” as used in this section was “singular in nature”. Accordingly, a new second garage structure on the lot was not permissible.

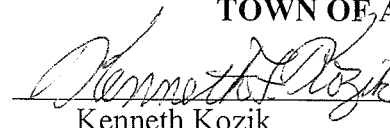
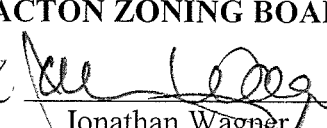
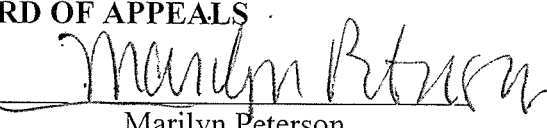
The Board of Appeals, after considering the materials submitted with the Petition, together with the information developed at the hearing finds that:

1. The Petitioner seeks to overturn the Zoning Enforcement Officer’s determination that the proposed construction of a second 2-bay garage structure would be a violation of the Acton Zoning Bylaw.
2. There is presently on the lot a structure that has the appearance and common characteristics of a garage.
3. Section 3.8.1.1 of the Acton Zoning Bylaw permits as an accessory use a “private garage or carport for not more than four motor vehicles”; and the term “private garage” as used in this section is singular in nature.
4. The construction of a second 2-bay garage structure on the lot would be a violation of the Acton Zoning Bylaw.

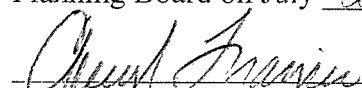
Therefore, the Board of Appeals, after reviewing the available materials and based upon the above findings, by a vote of 2-1 voted not to overturn and to **UPHOLD** the Zoning Enforcement Officer’s determination that the proposed construction of a second 2-bay garage structure would be a violation of the Acton Zoning Bylaw. Board Members Kenneth Kozik and Jonathan Wagner voted to uphold and Member Marilyn Peterson voted to overturn the Zoning Enforcement Officer’s determination.

Any person aggrieved by this decision may appeal pursuant to Massachusetts General Laws Chapter 40A, Section 17 within 20 days after this decision is filed with the Acton Town Clerk.

TOWN OF ACTON ZONING BOARD OF APPEALS

		
Kenneth Kozik	Jonathan Wagner	Marilyn Peterson
Chairman	Member	Member

I certify that copies of this decision have been filed with the Acton Town Clerk and Planning Board on July 25, 2011.


Cheryl Frazier, Secretary
Board of Appeals